IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 118/2007

(Ashok Leyland Finance & Ors. V/s State of Rajasthan & Anr.)

Date of Order : 11/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. P.R.Singh, for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners seek quashing of FIR No.447/04 registered at Police Station, Sardarpura, Jodhpur for the offences under Sections 406, 420, 384/120B IPC.

I have heard learned counsel for the petitioners and public prosecutor for the State.

It is contended by learned counsel for the petitioners that after the FIR having been lodged, the parties have compromised the matter and therefore, the FIR may be quashed.

Learned public prosecutor for the State submits that the petitioners moved a bail application under Section 438

Cr.P.C. in the very FIR and this Court finding a prima-facie case as also finding that the FIR discloses the cognizable offences, declined to grant bail to the petitioners and the bail application has been dismissed, against which the petitioners preferred a special leave petition before Hon'ble Supreme Court being Special Leave to Appeal (Cr.) No.2336/06. The Hon'ble Supreme Court by order dated 3.1.2007 dismissed the special leave to appeal filed by the petitioners. As such, the request of the petitioners seeking anticipatory bail under Section 438 Cr.P.C. was rejected by the Hon'ble Supreme Court in the very FIR in question.

Learned counsel for the petitioners submits that in Charanjit Singh Chadha Vs. Sudhir Mehra, 2001 Cr.L.R. (SC) 561, Hon'ble Apex Court held that the financier has right to repossess the vehicle. Learned counsel for the petitioner has relied on a decision of this Court in Ram Chandra and Anr. Vs. State and Anr. S.B.Cr.Misc. Petition No.2380/06 decided on 30.11.2006 wherein this Court relying on the decision of Hon'ble Supreme Court in B.S.Joshi and Ors. Vs. State of Haryana and another, 2003 RCC (SC) 400, quashed the criminal proceedings pending in the Court of Addl. Chief Judicial Magistrate, Shahpura for the offences under Sections 308, 365, 325, 341 and 323 IPC.

In the instant case, in my view, the FIR discloses the cognizable offences. This fact has been considered by this Court

at the time of considering the bail application under Section 438 Cr.P.C. as well as by the Hon'ble Supreme Court and by an elaborate order, the Hon'ble Supreme Court dismissed the bail application filed by the petitioners. Thus, it cannot be said that the FIR does not disclose the cognizable offences.

It is settled law that FIR can be quashed if it does not disclose the cognizable offences or it is absurd, inherently improbable or barred by provisions of any law.

In State of Haryana and Others Vs. Bhajan Lal and Ors, 1992 (Suppl.) 1 SCC 335, Hon'ble Apex Court laid down following guidelines :-

(1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a

case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The Apex Court accordingly held that if any of the conditions mentioned therein are satisfied then only the FIR can be quashed. Hon'ble Apex Court further held that the power of

quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

The decision relied on by learned counsel for the petitioners in Ram Chandra and anr. (supra) turns on its own facts as no point of law has been decided therein. The decision relied on by learned counsel for the petitioners in the case of Charanjit Singh (supra) has no application in the facts and the circumstances of the instant case.

Keeping in view the decision of Hon'ble Supreme Court in the very FIR where the offences are cognizable and non-bailable, in my view, it is not a fit case for quashing the FIR on the mere saying that the parties have compromised the matter. It is always open for the first informant if the offence is compoundable to move the trial court and seek compounding of the offences under Section 320 Cr.P.C.

In this view of the matter, no case for interference is made out. The criminal misc. petition is dismissed.

(H.R.PANWAR),J.

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